

File No.: PI07-17359
Document No.: 334664

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

LISA DESOMBRE, a natural guardian
of AJH, a minor,

Plaintiff,

v.

KB TOYS, INC., d/b/a KB TOYS,

Defendant.

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C.A. No.: 07-CV-00022 (JJF)

TRIAL BY JURY OF 12 DEMANDED

ANSWER

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

2. Admitted.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

4. Admitted that this case involves parties of different states. Defendant is without knowledge or information sufficient to form a belief as to the truth as to whether the controversy exceeds the amount of \$75,000.00.

5. Admitted.

6. Admitted.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

8. Admitted.

9. This averment calls for a legal conclusion, and therefore no response is necessary.

To the extent a response is necessary, the averment is denied.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

COUNT I

NEGLIGENCE

14. Defendant hereby re-alleges and incorporates herein its Answers to paragraphs 1 through 13 of the Complaint.

15. Denied.

16. Denied.

17.(a)-(e) Denied.

18. Denied.

DAMAGES

19. Defendant hereby re-alleges and incorporates herein its Answers to paragraphs 1 through 18 of the Complaint.

20. Denied as to any liability on the part of the Defendant. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the averment.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

25. Denied as to any liability on the part of the Defendant. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the averment.

26. Denied as to any liability on the part of the Defendant. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the averment.

FIRST AFFIRMATIVE DEFENSE

27. Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff Lisa Desombre was negligent in a manner proximately causing the incident by failing to exercise reasonable care, failing to keep a proper lookout, and/or failing to notice an open and obvious dangerous condition.

SECOND AFFIRMATIVE DEFENSE

28. Plaintiff's claims are barred, in whole or in part, to the extent that an intervening or superceding cause was the proximate cause of the incident.

THIRD AFFIRMATIVE DEFENSE

29. Plaintiff's claims are barred, in whole or in part, to the extent that the incident was proximately caused by the negligent acts of a third person.

WHEREFORE, Defendant KB Toys, Inc. requests the Complaint be dismissed, with prejudice, costs paid by Plaintiff.

HECKLER & FRABIZZIO

DANIEL P. BENNETT I.D. #2842
The Corporate Plaza
800 Delaware Avenue, Suite 200
P. O. Box 128
Wilmington, DE 19899-0128
Attorney for Defendant

Date: March 1, 2007

CERTIFICATE OF SERVICE

I, Daniel P. Bennett, Esquire of Heckler & Frabizzio do hereby certify that on the 1st day of March 2007, two true and correct copies of the Answer were served by first-class mail, postage prepaid on the following attorney of record:

Marc H. Snyder, Esquire
Rosen, Moss, Snyder & Bleefeld, L.L.P.
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HECKLER & FRABIZZIO

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KB Toys, Inc. d/b/a KB Toys

Date: March 1, 2007